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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,889	10/24/2003	Collins P. Mary Lynne	961094.00002	8683
27114	7590	04/07/2004	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE, SUITE 2040 MILWAUKEE, WI 53202-4497			MONDESI, ROBERT B	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,889	<b>Applicant(s)</b> MARY LYNNE ET AL.	
	<b>Examiner</b> Robert B Mondesi	<b>Art Unit</b> 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

The current application filed on October 24, 2003 is a CON of 09/660,176 now PAT 6,680,179, which claims priority to provisional application 60/153,576 filed on September 13, 1999.

### ***Preliminary Amendment***

The preliminary amendment filed October 24, 2003 has been entered.

### ***Information Disclosure Statement***

The IDS filed October 24, 2003 has been received and is signed and considered, a copy of the IDS is attached to the following document.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 6-8, 18 and 20** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In **claims 6 and 8** "RC-H" needs to be spelled out in the first instance of use.

In **claims 8 and 20** "LH, RC-L and RC-M" need to be spelled out in the first instance of use.

In **claims 18 and 20** "RCH-H" needs to be spelled out in the first instance of use.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

**Claim 4** is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claim 5** is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claim 6** is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claim 7** is rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 2** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claims 8-10** are rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 4** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claims 16-17 and 19** are rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 5** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claim 18** is rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 6** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claim 20** is rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 7** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

**Claims 21-22** are rejected under 35 U.S.C. 101 as claiming the same invention as that of **claim 8** of prior U.S. Patent No. 6,680,179. This is a double patenting rejection.

### ***Conclusion***

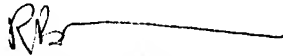
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 1653



Robert B Mondesi  
Patent Examiner  
Group 1653

04-02-04

  
ROBERT A. WAX  
PRIMARY EXAMINER